

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**PACIFIC WEST PHARMACY, INC.
ARTHUR C. WHITNEY, PRESIDENT/SHAREHOLDER
HELEN S. WHITNEY, SEC./TREAS./SHAREHOLDER
HORIZON WEST, INC., SHAREHOLDER
TOM ROGERS aka THOMAS STEVEN ROGERS,
PHARMACIST-IN-CHARGE
4363 Pacific Street
Rocklin, CA 95677**

Pharmacy Permit No. PHY 40592

Case No. 5745

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
PACIFIC WEST PHARMACY, INC.**

Respondent.

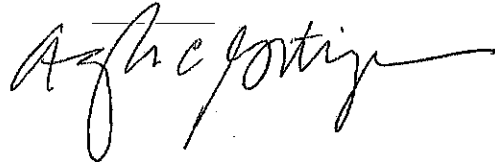
DECISION AND ORDER

The attached Stipulated Settlement of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on September 6, 2017.

It is so ORDERED on August 7, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 XAVIER BECERRA
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
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4 1300 I Street, Suite 125
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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 5745

11 **PACIFIC WEST PHARMACY, INC.**
12 **ARTHUR C. WHITNEY,**
13 **PRES./SHAREHOLDER**
14 **HELEN S. WHITNEY,**
15 **SEC./TREAS./SHAREHOLDER**
16 **HORIZON WEST, INC., SHAREHOLDER**
17 **TOM ROGERS aka THOMAS STEVEN**
18 **ROGERS, PHARMACIST-IN-CHARGE**
19 **4363 Pacific Street**
Rocklin, CA 95677

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
PACIFIC WEST PHARMACY, INC.

20 **Pharmacy Permit No. PHY 40592**

21 **Respondent.**

22 **IT IS STIPULATED AND AGREED** by and between the parties to the above-entitled
23 proceedings that the following matters are true:

24 **PARTIES**

- 25 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
26 (Board). She brought this action solely in her official capacity and is represented in this matter by
27 Xavier Becerra, Attorney General of the State of California, by Jeffrey M. Phillips, Deputy
28 Attorney General.
2. Respondent Pacific West Pharmacy, Inc. (Respondent) is represented in this
proceeding by attorney Gregory Matzen, whose address is: 2104 Big Sandy Court, Gold River,

1 CA, 95670.

2 3. On or about December 16, 1994, the Board issued Pharmacy Permit No. PHY 40592
3 to Pacific West Pharmacy, Inc. (Respondent). The Pharmacy Permit was in full force and effect
4 at all times relevant to the charges brought in Accusation No. 5745, and will expire on December
5 1, 2017, unless renewed.

6 **JURISDICTION**

7 4. Accusation No. 5745 was filed before the Board, and is currently pending against
8 Respondent. The Accusation and all other statutorily required documents were properly served
9 on Respondent on August 12, 2016. Respondent timely filed its Notice of Defense contesting the
10 Accusation.

11 5. A copy of Accusation No. 5745 is attached as exhibit A and incorporated herein by
12 reference.

13 **ADVISEMENT AND WAIVERS**

14 6. Respondent has carefully read, fully discussed with counsel, and understands the
15 charges and allegations in Accusation No. 5745. Respondent has also carefully read, fully
16 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
17 Order.

18 7. Respondent is fully aware of its legal rights in this matter, including the right to a
19 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
20 the witnesses against them; the right to present evidence and to testify on its own behalf; the right
21 to the issuance of subpoenas to compel the attendance of witnesses and the production of
22 documents; the right to reconsideration and court review of an adverse decision; and all other
23 rights accorded by the California Administrative Procedure Act and other applicable laws.

24 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
25 every right set forth above.

26 **CULPABILITY**

27 9. Respondent admits the truth of each and every charge and allegation in Accusation
28 No. 5745.

10. Respondent agrees that its Pharmacy Permit is subject to discipline and they agree to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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1 delinquency in submission of reports as directed may be added to the total period of probation.
2 Moreover, if the final probation report is not made as directed, probation shall be automatically
3 extended until such time as the final report is made and accepted by the board.

4 **3. Interview with the Board**

5 Upon receipt of reasonable prior notice, respondent owner shall appear in person for
6 interviews with the board or its designee, at such intervals and locations as are determined by the
7 board or its designee. Failure to appear for any scheduled interview without prior notification to
8 board staff, or failure to appear for two (2) or more scheduled interviews with the board or its
9 designee during the period of probation, shall be considered a violation of probation.

10 **4. Cooperate with Board Staff**

11 Respondent owner shall cooperate with the board's inspection program and with the board's
12 monitoring and investigation of respondent's compliance with the terms and conditions of their
13 probation. Failure to cooperate shall be considered a violation of probation.

14 **5. Reimbursement of Board Costs**

15 As a condition precedent to successful completion of probation, respondent owner shall pay
16 to the board its costs of investigation and prosecution in the amount of \$ 8,398.69. Respondent
17 owner may make said payments in a payment plan approved by the Board. There shall be no
18 deviation from the payment plan absent prior written approval by the board or its designee.
19 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

20 The filing of bankruptcy by respondent owner shall not relieve respondent of their
21 responsibility to reimburse the board its costs of investigation and prosecution.

22 **6. Probation Monitoring Costs**

23 Respondent owner shall pay any costs associated with probation monitoring as determined
24 by the board each and every year of probation. Such costs shall be payable to the board on a
25 schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as
26 directed shall be considered a violation of probation.

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1 **7. Status of License**

2 Respondent owner shall, at all times while on probation, maintain current licensure with the
3 board. If respondent owner submits an application to the board, and the application is approved,
4 for a change of location, change of permit or change of ownership, the board shall retain
5 continuing jurisdiction over the license, and the respondent shall remain on probation as
6 determined by the board. Failure to maintain current licensure shall be considered a violation of
7 probation.

8 If respondent owner's license expires or is cancelled by operation of law or otherwise at any
9 time during the period of probation, including any extensions thereof or otherwise, upon renewal
10 or reapplication respondent owner's license shall be subject to all terms and conditions of this
11 probation not previously satisfied,

12 **8. License Surrender While on Probation**

13 Following the effective date of this decision, should respondent owner discontinue
14 business, respondent owner may tender the premises license to the board for surrender. The
15 board or its designee shall have the discretion whether to grant the request for surrender or take
16 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of
17 the license, respondent will no longer be subject to the terms and conditions of probation.

18 Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and
19 renewal license to the board within ten (10) days of notification by the board that the surrender is
20 accepted. Respondent owner shall further submit a completed Discontinuance of Business form
21 according to board guidelines and shall notify the board of the records inventory transfer.

22 Respondent owner shall also, by the effective date of this decision, arrange for the
23 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written
24 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that
25 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
26 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five
27 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy
28 of the written notice to the board. For the purposes of this provision, "ongoing patients" means

1 those patients for whom the pharmacy has on file a prescription with one or more refills
2 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
3 days.

4 Respondent owner may not apply for any new licensure from the board for three (3) years
5 from the effective date of the surrender. Respondent owner shall meet all requirements applicable
6 to the license sought as of the date the application for that license is submitted to the board.

7 Respondent owner further stipulates that he or she shall reimburse the board for its costs of
8 investigation and prosecution prior to the acceptance of the surrender.

9 **9. Notice to Employees**

10 Respondent owner shall, upon or before the effective date of this decision, ensure that all
11 employees involved in permit operations are made aware of all the terms and conditions of
12 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
13 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
14 remain posted throughout the probation period. Respondent owner shall ensure that any
15 employees hired or used after the effective date of this decision are made aware of the terms and
16 conditions of probation by posting a notice, circulating a notice, or both. Additionally,
17 respondent owner shall submit written notification to the board, within fifteen (15) days of the
18 effective date of this decision, that this term has been satisfied. Failure to submit such
19 notification to the board shall be considered a violation of probation.

20 "Employees" as used in this provision includes all full-time, part-time,
21 volunteer, temporary and relief employees and independent contractors employed or
22 hired at any time during probation.

23 **10. Owners and Officers: Knowledge of the Law**

24 Respondent shall provide, within thirty (30) days after the effective date of this decision,
25 signed and dated statements from its owners, including any owner or holder of ten percent (10%)
26 or more of the interest in respondent or respondent's stock, and any officer, stating under penalty
27 of perjury that said individuals have read and are familiar with state and federal laws and
28 regulations governing the practice of pharmacy. The failure to timely provide said statements

1 under penalty of perjury shall be considered a violation of probation.

2 **11. Posted Notice of Probation**

3 Respondent owner shall prominently post a probation notice provided by the board in a
4 place conspicuous and readable to the public. The probation notice shall remain posted during
5 the entire period of probation.

6 Respondent owner shall not, directly or indirectly, engage in any conduct or make any
7 statement which is intended to mislead or is likely to have the effect of misleading any patient,
8 customer, member of the public, or other person(s) as to the nature of and reason for the probation
9 of the licensed entity.

10 Failure to post such notice shall be considered a violation of probation.

11 **12. Violation of Probation**

12 If a respondent owner has not complied with any term or condition of probation, the board
13 shall have continuing jurisdiction over respondent license, and probation shall be automatically
14 extended until all terms and conditions have been satisfied or the board has taken other action as
15 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
16 probation, and to impose the penalty that was stayed.

17 If respondent owner violates probation in any respect, the board, after giving respondent
18 owner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary
19 order that was stayed. Notice and opportunity to be heard are not required for those provisions
20 stating that a violation thereof may lead to automatic termination of the stay and/or revocation of
21 the license. If a petition to revoke probation or an accusation is filed against respondent during
22 probation, the board shall have continuing jurisdiction and the period of probation shall be
23 automatically extended until the petition to revoke probation or accusation is heard and decided.

24 **13. Completion of Probation**

25 Upon written notice by the board or its designee indicating successful completion of
26 probation, respondent license will be fully restored.

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1 Board of Pharmacy.

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3 DATED: 2/4/17


4 PACIFIC WEST PHARMACY, INC.
5 Respondent

6 I have read and fully discussed with Respondent Pacific West Pharmacy, Inc. the terms and
7 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
8 I approve its form and content.

9
10 DATED: 2/3/17


11 GREGORY MATZEN
12 Attorney for Respondent

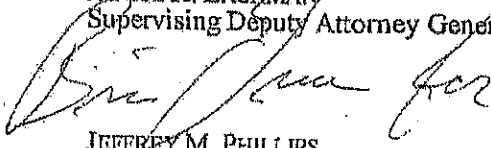
13 ENDORSEMENT

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
15 submitted for consideration by the Board of Pharmacy.

16
17 Dated: 2/6/17

Respectfully submitted,

18 XAVIER BECERRA
19 Attorney General of California
20 JANICE K. LACEMAN
21 Supervising Deputy Attorney General


22 JEFFREY M. PHILLIPS
23 Deputy Attorney General
24 Attorneys for Complainant

25
26 SA2016100465
27 Stipulation.rtf
28

Exhibit A

Accusation No. 5745

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
4 State Bar No. 154990
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6 Telephone: (916) 324-6292
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

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14 **HELEN S. WHITNEY, SEC./TREAS./SHAREHOLDER**
15 **HORIZON WEST, INC., SHAREHOLDER**
16 **TOM ROGERS aka THOMAS STEVEN ROGERS,**
17 **PHARMACIST-IN-CHARGE**
18 **4363 Pacific Street**
19 **Rocklin, CA 95677**

A C C U S A T I O N

20 **Pharmacy Permit No. PHY 40592**

21 **and**

22 **THOMAS STEVEN ROGERS**
23 **20291 Rim Rock Court**
24 **Foresthill, CA 95631**

25 **Pharmacist License No. RPH 30137**

26 Respondents.

27 Complainant alleges:

28 **PARTIES**

1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

2. On or about December 16, 1994, the Board issued Pharmacy Permit Number PHY 40592 to Pacific West Pharmacy, Inc. ("Respondent Pacific West Pharmacy" or "Pacific West

1 Pharmacy”), with Arthur C. Whitney as president and 38 percent shareholder, Helen S. Whitney
2 as secretary, treasurer, and 12 percent shareholder, and Horizon West, Inc. as 50 percent
3 shareholder. On or about October 25, 2005, Tom Rogers, also known as Thomas Steven Rogers
4 (“Respondent Rogers” or “PIC Rogers”), became the pharmacist-in-charge. The pharmacy
5 permit was in full force and effect at all times relevant to the charges brought herein and will
6 expire on December 1, 2016, unless renewed.

7 3. On or about May 4, 1976, the Board issued Pharmacist License Number RPH 30137
8 to Respondent Rogers. The pharmacist license was in full force and effect at all times relevant to
9 the charges brought herein and will expire on June 30, 2016, unless renewed.

10 JURISDICTION

11 4. This Accusation is brought before the Board under the authority of the following
12 laws. All section references are to the Business and Professions Code (“Code”) unless otherwise
13 indicated.

14 5. Section 4300 of the Code states, in pertinent part:

15 (a) Every license issued may be suspended or revoked.

16 (b) The board shall discipline the holder of any license issued by the
17 board, whose default has been entered or whose case has been heard by the board and
found guilty, by any of the following methods:

18 (1) Suspending judgment.

19 (2) Placing him or her upon probation.

20 (3) Suspending his or her right to practice for a period not exceeding one
21 year.

22 (4) Revoking his or her license.

23 (5) Taking any other action in relation to disciplining him or her as the
board in its discretion may deem proper . . .

24 6. Section 4300.1 of the Code states:

25 The expiration, cancellation, forfeiture, or suspension of a board-issued
26 license by operation of law or by order or decision of the board or a court of law, the
placement of a license on a retired status, or the voluntary surrender of a license by a
27 licensee shall not deprive the board of jurisdiction to commence or proceed with any
investigation of, or action or disciplinary proceeding against, the licensee or to render
28 a decision suspending or revoking the license.

11. Section 4081 of the Code states, in pertinent part:

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in this section . . .

12. Section 4105, subdivision (a), of the Code states:

All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

13. Section 4113, subdivision (c), of the Code states that "[t]he pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."

14. Section 4115 of the Code states, in pertinent part:

(a) A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of a pharmacist. The pharmacist shall be responsible for the duties performed under his or her supervision by a technician.

....

(d) The board shall adopt regulations to specify tasks pursuant to subdivision (a) that a pharmacy technician may perform under the supervision of a pharmacist. Any pharmacy that employs a pharmacy technician shall do so in conformity with the regulations adopted by the board.

....

(f)(1) A pharmacy with only one pharmacist shall have no more than one pharmacy technician performing the tasks specified in subdivision (a). The ratio of pharmacy technicians performing the tasks specified in subdivision (a) to any additional pharmacist shall not exceed 2:1, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117. This ratio is applicable to all practice settings, except for an inpatient of a licensed health facility, a patient of a licensed home health agency, as specified in paragraph (2), an

1 inmate of a correctional facility of the Department of Corrections and Rehabilitation,
2 and for a person receiving treatment in a facility operated by the State Department of
State Hospitals, the State Department of Developmental Services, or the Department
of Veterans Affairs.

3 (2) The board may adopt regulations establishing the ratio of pharmacy
4 technicians performing the tasks specified in subdivision (a) to pharmacists applicable
5 to the filling of prescriptions of an inpatient of a licensed health facility and for a
6 patient of a licensed home health agency. Any ratio established by the board pursuant
7 to this subdivision shall allow, at a minimum, at least one pharmacy technician for a
single pharmacist in a pharmacy and two pharmacy technicians for each additional
pharmacist, except that this ratio shall not apply to personnel performing clerical
functions pursuant to Section 4116 or 4117 . . .

8 15. Title 16, California Code of Regulations ("CCR"), section 1714 states, in part:

9

10 (b) Each pharmacy licensed by the board shall maintain its facilities,
11 space, fixtures, and equipment so that drugs are safely and properly prepared,
12 maintained, secured and distributed. The pharmacy shall be of sufficient size and
unobstructed area to accommodate the safe practice of pharmacy . . .

13 16. Title 16, CCR, section 1718 states:

14 "Current Inventory" as used in Sections 4081 and 4332 of the Business
15 and Professions Code shall be considered to include complete accountability for all
dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

16 The controlled substances inventories required by Title 21, CFR, Section
17 1304 shall be available for inspection upon request for at least 3 years after the date of
the inventory.

18 17. Title 16, CCR, section 1793.7 states, in pertinent part:

19 (a) Except as otherwise provided in section 1793.8, any function
20 performed by a pharmacy technician in connection with the dispensing of a
prescription, including repackaging from bulk and storage of pharmaceuticals, must
21 be verified and documented in writing by a pharmacist. Except for the preparation of
prescriptions for an inpatient of a hospital and for an inmate of a correctional facility,
22 the pharmacist shall indicate verification of the prescription by initialing the
prescription label before the medication is provided to the patient.

23 (b) Pharmacy technicians must work under the direct supervision of a
24 pharmacist and in such a relationship that the supervising pharmacist is fully aware of
all activities involved in the preparation and dispensing of medications, including the
maintenance of appropriate records.

25

26 (e) A pharmacist shall be responsible for all activities of pharmacy
27 technicians to ensure that all such activities are performed completely, safely and
28 without risk of harm to patients . . .

1 **COST RECOVERY**

2 18. Section 125.3 provides, in pertinent part, that a Board may request the administrative
3 law judge to direct a licensee found to have committed a violation or violations of the licensing
4 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
5 case.

6 **DRUG CLASSIFICATIONS**

7 19. "Xanax," a brand name for alprazolam, is a Schedule IV controlled substance
8 pursuant to Health and Safety Code section 11057, subdivision (d)(1). Xanax is used to treat
9 anxiety.

10 20. "Soma", a brand name for carisoprodol, is a Schedule IV Controlled Substance
11 pursuant to Title 21, Code of Federal Regulations ("CFR"), section 1308.14, subdivision (c)(6).
12 Soma is used as a muscle relaxant.

13 21. "Norco", a brand name for hydrocodone/acetaminophen (APAP), was a Schedule III
14 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e). Norco
15 was reclassified as a Schedule II controlled substance pursuant to Title 21, CFR, section 1308.12,
16 effective October 6, 2014. Norco is used to treat pain.

17 22. "Dilaudid," a brand name for hydromorphone, is a Schedule II controlled substance
18 pursuant to Health and Safety Code section 11055, subdivision (b)(1)(J). Dilaudid is used to treat
19 pain.

20 23. "Ativan," a brand name for lorazepam, is a Schedule IV controlled substance
21 pursuant to Health and Safety Code section 11057, subdivision (d)(16). Ativan is used to treat
22 anxiety.

23 24. "Dolophine", a brand name for methadone, is a Schedule II controlled substance
24 pursuant to Health and Safety Code section 11055, subdivision (c)(14). Dolophine is used to treat
25 pain.

26 25. "Roxanol", a brand name for morphine sulfate, is a Schedule II controlled substance
27 pursuant to Health and Safety Code section 11055, subdivision (b)(1)(L). Roxanol is used to treat
28 pain.

26. "Percolone" and "Roxicodone" are brand names for oxycodone. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M). Percolone and Roxicodone are used to treat pain.

27. All of the above controlled substances are dangerous drugs pursuant to section 4022.

STATEMENT OF FACTS

28. On or about October 15, 2015, Board Inspector S. K. went to Pacific West Pharmacy to conduct an inspection. The pharmacy was not open for walk-in retail business as it provided services to skilled nursing and assisted living facilities. The pharmacy maintained Talyst Automated Drug Delivery Systems (ADDS) and emergency kits (E-kits) in some of the facilities they serviced. Upon arrival, there was only one pharmacist on duty and in the building, Respondent Thomas Rogers, the pharmacist-in-charge (PIC). Pharmacist K. D. arrived later during the inspection. There was a closed door labeled "TV Room" near the front of the pharmacy. Inspector S. K. opened the door and observed pharmacy technician (TCH) C. Y. filling and compounding sterile prescription preparations in the room. There was no one else in the room, and there were no unobstructed windows on the walls nor a window in the door.

29. Inspector S. K. went to the main pharmacy area and observed: TCH P. P. filling and labeling prescriptions, TCH Y. Y. filling prescriptions, TCH K. B. pulling drugs from stock for prescriptions and filling prescriptions, and TCH D. L. handling controlled substances and other drugs. D. L. was organizing controlled substances and putting them away on the drug stock shelves. PIC Rogers was in the main pharmacy area during the inspection.

30. Inspector S. K. went into an open, separate room in the rear of the main filling area and observed TCH R. B. filling cells with drugs for the ADDS. There was no one else in the room. There was no door on this room.

31. PIC Rogers provided various documents to Inspector S. K., including inventories of controlled substances conducted by the pharmacy on October 1, 2015 through October 5, 2015. Inspector S. K. reviewed the pharmacy's invoices and found that they purchased controlled substances from Cardinal Health ("Cardinal"), ParMed, and ANDA, Inc. ("ANDA").

1 32. Upon completion of the inspection, Inspector S. K. issued an inspection report and
2 provided PIC Rogers with a copy. Inspector S. K. requested that PIC Rogers provide complete
3 records of all acquisitions and dispositions of all controlled substances from December 13, 2013
4 to October 4, 2015, other than from Cardinal, ParMed, and ANDA. The 2013 and 2014
5 controlled substance inventories did not include a count of controlled substances in the ADDS
6 and E-kits. PIC Rogers stated that these controlled substances were stored at the off site facilities
7 in the ADDS and E-kits in order to provide emergency access to medications needed by patients.
8 Inspector S. K. requested an accounting of all controlled substances which were not on the
9 premises during the previous inventories.

10 33. On or about October 21, 2015, Inspector S. K. received the pharmacy's dispensing
11 data and the 2013 and 2014 offsite inventory information.

12 34. On or about October 22, 2015, Inspector S. K. sent Cardinal/ParMed and ANDA
13 letters, requesting records of all Schedule II to V controlled substances sold to Pacific West
14 Pharmacy from December 13, 2013 to October 4, 2015, including all credits. ANDA and
15 Cardinal/ParMed provided the information to Inspector S. K. on October 26, 2015 and November
16 10, 2015, respectively.

17 35. Inspector S. K. conducted an audit based on the 2013 inventory, 2015 inventory,
18 disposition data from Pacific West Pharmacy, and acquisition and credit data from Cardinal/
19 ParMed and ANDA. Inspector S. K. found that the pharmacy had significant shortages and
20 overages of controlled substances from December 13, 2014 to October 4, 2015, as set forth
21 below.

22 36. On or about November 18, 2015, Board Inspector S. K. returned to the pharmacy with
23 Board Inspector J. H. to conduct an inspection and follow up on the audit results. Inspector S. K.
24 found that PIC Rogers was the only pharmacist on duty and in the building. Inspector S. K.
25 observed TCH A. M. pulling drugs for prescriptions from stock and filling prescriptions, TCH's
26 P. P. and Y. Y. filling and labeling prescriptions, and TCH C. Y. compounding sterile
27 prescription preparations.

28 //

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Violations of the Pharmacy Law/Pharmacy Technician to Pharmacist Ratio)**

3 37. Respondent Pacific West Pharmacy is subject to disciplinary action for
4 unprofessional conduct pursuant to section 4301, subdivision (o), of the Code in that Respondent
5 violated section 4115, subdivisions (a) and (f)(1), of the Code and Title 16, CCR, section 1793.7,
6 subdivision (b), as follows: On or about October 15, 2015, and November 18, 2015, Respondent
7 authorized or allowed at least four pharmacy technicians to fill prescriptions, compound sterile
8 prescription preparations, stock ADDS', or pull drugs from stock for prescriptions, as set forth in
9 paragraphs 28 - 36, above, when, in fact, Respondent Rogers was the only pharmacist on duty and
10 in the building. Further, Respondent Rogers was not in a position to directly supervise, and/or
11 was not fully aware of, all of the activities of the technicians, who were preparing and dispensing
12 medications.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Failure to Maintain Pharmacy, Fixtures, and Equipment**
15 **so that Drugs Were Safely and Properly Secured)**

16 38. Respondent Pacific West Pharmacy is subject to disciplinary action for
17 unprofessional conduct pursuant to section 4301, subdivisions (o) and (j), of the Code in that on
18 and between December 13, 2013 and October 4, 2015, Respondent failed to maintain the
19 pharmacy and its facilities, space, fixtures and/or equipment so that drugs were safely and
20 properly secured, in violation of title 16, CCR, section 1714, subdivision (b), resulting in
21 significant shortages and overages of controlled substances, as follows:

22 //

23 //

24 //

Drug	Shortage or Overage
alprazolam 2 mg	-908
carisoprodol 350 mg	-94
hydrocodone/APAP 10/325 mg	-27,980
hydrocodone/APAP 5/325 mg	-10,400
hydrocodone/APAP 7.5/325 mg	-945
hydromorphone 2 mg	-544
lorazepam 0.5 mg	-8,216
lorazepam 1 mg	2,862
methadone 10 mg	507
methadone 5 mg	104
morphine 100 mg/5 ml sol.	-324
oxycodone 10 mg	-715
oxycodone 30 mg	-638
oxycodone 5 mg	-356
oxycodone/APAP 10/325 mg	-2,454
oxycodone/APAP 5/325 mg	-398
Total units unaccounted for by the pharmacy	57,445

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain a Current Inventory of All Dangerous Drugs)

39. Respondent Pacific West Pharmacy is subject to disciplinary action for unprofessional conduct pursuant to section 4301, subdivision (o), of the Code in that Respondent violated sections 4081, subdivision (a), and 4105, subdivision (o), of the Code as follows:

Respondent failed to maintain an accurate or current inventory of all dangerous drugs in the pharmacy, resulting in significant shortages and overages of controlled substances, as set forth in paragraph 38, above.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Pharmacy Law/Pharmacy Technician to Pharmacist Ratio)**

3 40. Respondent Rogers is subject to disciplinary action for unprofessional conduct
4 pursuant to section 4301, subdivision (o), of the Code in that Respondent violated section 4115,
5 subdivisions (a) and (f)(1), of the Code and Title 16, CCR, section 1793.7, subdivision (b), as
6 follows: On or about October 15, 2015, and November 18, 2015, Respondent authorized or
7 allowed at least four pharmacy technicians to fill prescriptions, compound sterile prescription
8 preparations, stock ADDS', or pull drugs from stock for prescriptions, as set forth in paragraphs
9 28 - 36, above. Respondent Rogers was the only pharmacist on duty and in the building. Further,
10 Respondent Rogers was not in a position to directly supervise and/or was not fully aware of all of
11 the activities of the technicians, who were preparing and dispensing medications.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Failure to Maintain Pharmacy, Fixtures, and Equipment**
14 **so that Drugs Were Safely and Properly Secured)**

15 41. Respondent Rogers is subject to disciplinary action for unprofessional conduct
16 pursuant to section 4301, subdivisions (o) and (j), of the Code in that on and between December
17 13, 2013 and October 4, 2015, Respondent failed to maintain Pacific West Pharmacy, Inc. and its
18 facilities, space, fixtures and/or equipment so that drugs were safely and properly secured, in
19 violation of title 16, CCR, section 1714, subdivision (b), resulting in significant shortages and
20 overages of controlled substances, as set the paragraph 38 above.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 **(Failure to Maintain a Current Inventory of All Dangerous Drugs)**

23 42. Respondent Rogers is subject to disciplinary action for unprofessional conduct
24 pursuant to section 4301, subdivision (o), of the Code in that Respondent violated sections 4081,
25 subdivision (a), and 4105, subdivision (o), of the Code as follows: Respondent failed to maintain
26 an accurate or current inventory of all dangerous drugs in Pacific West Pharmacy, Inc., resulting
27 in significant shortages and overages of controlled substances, as set forth in paragraph 38 above.

28 //

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Permit Number PHY 40592, issued to Pacific West Pharmacy, Inc.;

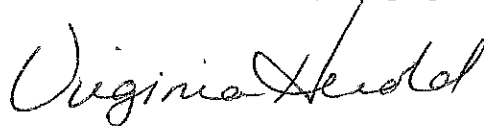
2. Revoking or suspending Pharmacist License Number RPH 30137, issued to Tom Rogers, also known as Thomas Steven Rogers;

3. Ordering Pacific West Pharmacy, Inc. and Tom Rogers, also known as Thomas Steven Rogers, to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

4. Taking such other and further action as deemed necessary and proper.

DATED: _____

7/30/16



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SA2016100465